

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

**Directions:** Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

<b>Appeal No. &amp; Caption</b>	Espin et al v. Citibank, N.A (Case No. 23-2083)
<b>Originating No. &amp; Caption</b>	Espin et al v. Citibank, N.A. (22-cv-00383-BO-RN)
<b>Originating Court/Agency</b>	U.S. District Court for Eastern District of North Carolina

<b>Jurisdiction</b> (answer any that apply)		
Statute establishing jurisdiction in Court of Appeals	9 U.S.C. §16(a)	
Time allowed for filing in Court of Appeals	30 days	
Date of entry of order or judgment appealed	September 29, 2023	
Date notice of appeal or petition for review filed	October 13, 2023	
If cross appeal, date first appeal filed		
Date of filing any post-judgment motion		
Date order entered disposing of any post-judgment motion		
Date of filing any motion to extend appeal period		
Time for filing appeal extended to		
Is appeal from final judgment or order?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
If appeal is not from final judgment, why is order appealable? 9 U.S.C. § 16(a) gives Citibank a statutory right to appeal from an order denying a motion to compel arbitration under 9 U.S.C. §§ 3-4. Citibank has appealed from such an order here.		

<b>Settlement</b> (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-731-9099.)		
Is settlement being discussed?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

<b>Transcript</b> (transcript order must be attached if transcript is needed and not yet on file)		
Is transcript needed for this appeal?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Has transcript been filed in district court?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Is transcript order attached?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

<b>Case Handling Requirements</b> (answer any that apply)		
Case number of any prior appeal in same case	N/A	
Case number of any pending appeal in same case	N/A	
Identification of any case pending in this Court or Supreme Court raising similar issue	N/A	
	If abeyance or consolidation is warranted, counsel must file an appropriate motion.	
Is expedited disposition necessary?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, motion to expedite must be filed.	
Is oral argument necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does case involve question of first impression?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, notice re: challenge to constitutionality of law must be filed.	

<b>Nature of Case</b> (Nature of case and disposition below. Attach additional page if necessary.)
See Attachment 1.

**Issues** (Non-binding statement of issues on appeal. Attach additional page if necessary)

See Attachment 2

**Adverse Parties** (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

Adverse Party: Pablo Espin (see Attachment 3 for additional counsel)

Attorney: Eric Knoll Lowney  
Address: Smith and Lowney PLLC  
2317 E. John St.  
Seattle, WA 98112

E-mail: knoll@smithandlowney.com

Phone: 206-860-2883

Adverse Party: Nicholas Padoa (see Attachment 3 for additional counsel)

Attorney: Eric Knoll Lowney  
Address: Smith and Lowney PLLC  
2317 E. John St.  
Seattle, WA 98112

E-mail: knoll@smithandlowney.com

Phone: 206-860-2883

**Adverse Parties (continued)**

Adverse Party: Jeremy Bell (see Attachment 3 for additional counsel)

Attorney: Eric Knoll Lowney  
Address: Smith and Lowney PLLC  
2317 E. John  
Seattle, WA 98112

E-mail: knoll@smithandlowney.com

Phone: 206-860-2883

Adverse Party: Keith Taylor (see Attachment 3 for additional counsel)

Attorney: Eric Knoll Lowney  
Address: Smith and Lowney PLLC  
2317 E. John St.  
Seattle, WA 98112

E-mail: knoll@smithandlowney.com

Phone: 206-860-2883

<b>Appellant</b> (Attach additional page if necessary.)	
Name: Citibank, N.A. (see Attachment 3 for additional counsel)  Attorney: Andrew J. Pincus Address: Mayer Brown LLP 1999 K. Street N.W. Washington D.C. 20006  E-mail: apincus@mayerbrown.com  Phone: 202-263-3000	Name:   Attorney: Address:    E-mail:   Phone:
<b>Appellant (continued)</b>	
Name:        Attorney: Address:      E-mail:   Phone:	Name:        Attorney: Address:      E-mail:   Phone:
Signature: <u>/s/ Andrew J. Pincus</u> Date: <u>10/31/23</u>  Counsel for: <u>Citibank, N.A.</u>	
<b>Certificate of Service</b> (required for parties served outside CM/ECF): I certify that this document was served on _____ by <input type="checkbox"/> personal delivery; <input type="checkbox"/> mail; <input type="checkbox"/> third-party commercial carrier; or <input type="checkbox"/> email (with written consent) on the following persons at the addresses or email addresses shown:	
Signature:	Date:

## **Espin et al. v. Citibank, N.A. - Docketing Statement Nature of Case (Attachment 1)**

This is an appeal from the denial of defendant Citibank, N.A.'s motion to compel plaintiffs to arbitrate their claims and to stay the district court action until the arbitrations are concluded. The Federal Arbitration Act authorizes an interlocutory appeal from the denial of such a motion. 9 U.S.C. § 16(a).

The plaintiffs are current or former active-duty servicemembers who filed a putative class action challenging aspects of Citibank's credit card benefits program for members of the military. The Servicemembers Civil Relief Act (SCRA) caps at 6% the interest rate charged to active duty servicemembers on their credit card debt incurred prior to active duty service. 50 U.S.C. § 3937(a)(1). Citibank's program is more protective of servicemembers' interests than the SCRA requires: Under Citibank's program, active duty servicemembers receive a 0% rather than 6% rate, and that 0% rate applies both to preexisting balances and new purchases made while the individual is on active duty. Plaintiffs nonetheless allege that Citibank's benefits program is unlawful and was designed to attract military customers who subsequently would be required to pay normal, contractually-specified rates on their balances once they left active service. Plaintiffs allege that the program violates the SCRA, the Military Lending Act (MLA), the Truth in Lending Act (TILA) as amended by the CARD Act of 2009, and the contracts between Citibank and its customers. Citibank strenuously denies the allegations.

Because each plaintiff entered into a cardmember agreement with Citibank that includes an arbitration clause, Citibank moved to compel arbitration. The district court denied the motion.

The district court's order denying arbitration turned entirely on a 2019 amendment to the SCRA, which added a provision stating that covered servicemembers asserting SCRA claims may "be a representative party on behalf of members of a class or be a member of a class, in accordance with the Federal Rules of Civil Procedure, notwithstanding any previous agreement to the contrary." 50 U.S.C. § 4042(a).

The district court held that this amendment required denial of Citibank's motion to compel arbitration. First, the court relied on its view of the combined effect of (1) what it concluded was the SCRA provision's guarantee that a covered servicemember may bring a class action in court notwithstanding an arbitration agreement requiring that disputes be determined individually in arbitration, and (2) the non-severability clause in Citibank's arbitration agreement stating that the arbitration agreement would not apply to a claim as to which the claimant was entitled to bring a class proceeding. The court held that because in its view the SCRA required class proceedings despite the parties' agreement to arbitrate on an individual basis, and the arbitration agreement stated that it was invalid if class proceedings were required notwithstanding its prohibition on such

proceedings, the arbitration agreement was invalid. The district court held in addition that the SCRA amendment invalidates agreements to arbitrate on an individual basis. Finally, the court held that the SCRA amendment applies retroactively to arbitration agreements like the plaintiffs' that were formed before the enactment of the 2019 amendment.

Although the SCRA amendment expressly applies only to SCRA claims—and therefore does not apply to plaintiffs' other claims in this case (*e.g.*, the MLA, TILA, and contract claims)—the court nonetheless held that the SCRA amendment invalidated the arbitration agreement as to all claims. The court did not reach plaintiffs' remaining arguments that (1) the MLA invalidates their arbitration agreements; and (2) that those agreements are invalid because they are unconscionable and violate public policy.

**Espin et al. v. Citibank, N.A. - Docketing Statement  
List of Issues on Appeal (Attachment 2)**

1) Whether the 2019 amendment to the Servicemembers Civil Relief Act, 50 U.S.C. § 4042(a)(3), which does not mention arbitration, overrides the Federal Arbitration Act's requirement that courts enforce arbitration agreements providing for individualized arbitration of federal statutory claims.

2) If 50 U.S.C. § 4042(a)(3) does not override the Federal Arbitration Act, whether the district court erred in holding that language in the arbitration agreements prohibiting arbitrators from resolving class claims entitles plaintiffs to bring a class action in court.

3) If 50 U.S.C. § 4042(a)(3) does override the Federal Arbitration Act, whether it applies retroactively to invalidate arbitration agreements entered into before the provision's enactment.

4) If 50 U.S.C. § 4042(a)(3) overrides the Federal Arbitration Act and applies retroactively, whether it invalidates plaintiffs' agreements for individual arbitration of non-SCRA claims.

5) Whether the provisions of the Military Lending Act invalidating certain arbitration agreements (50 U.S.C. §§ 987(e)(3) & (f)(4)) apply to arbitration clauses in credit card agreements for accounts opened before the Department of Defense exercised its delegated authority to extend the Act's provisions to credit cards.

6) Whether the agreements between Citibank and plaintiffs providing for arbitration of disputes arising out of or relating to plaintiffs' credit card accounts are unconscionable or violate public policy.

**Espin et al. v. Citibank, N.A. - Docketing Statement  
Additional Counsel (Attachment 3)**

**Counsel for Pablo Espin, Nicholas Padao, Jeremy Bell, and Keith Taylor**

Knoll D. Lowney  
Claire Tonry  
Marc Zemel  
Alyssa Koepfgen  
Smith & Lowney, PLLC  
2317 E. John Street  
Seattle, Washington 98112  
Tel: (206) 860-2883  
Fax: (206) 860-4187  
Knoll@smithandlowney.com  
Claire@smithandlowney.com  
Marc@smithandlowney.com  
Alyssa@smithandlowney.com

Matthew D. Ballew  
Paul J. Puryear, Jr.  
Zaytoun Ballew & Taylor, PLLC  
3130 Fairhill Drive, Suite 100  
Raleigh, NC 27612  
Tel: (919) 832-6690  
Fax: (919) 831-4793  
MBallew@zaytounlaw.com  
RZaytoun@zaytounlaw.com  
PJPuryear@zaytounlaw.com

**Counsel for Citibank, N.A.**

Lucia Nale  
Kyle J. Steinmetz  
Mayer Brown LLP  
71 S. Wacker Drive  
Chicago, IL 6060  
Tel: (312) 782-0600  
Fax: (312) 706-8474  
lnale@mayerbrown.com  
ksteinmetz@mayerbrown.com



Andrew J. Pincus  
Archis A. Parasharami  
Kevin Ranlett  
Mayer Brown LLP  
1999 K. Street NW  
Washington, DC 20006  
Tel: (202)-263-3000  
Fax: (202) 263-3300  
apincus@mayerbrown.com  
aparasharami@mayerbrown.com  
kranlett@mayerbrown.com